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EDWARD P. DUTKIEWICZ, ESQ. EDWARD P. DUTKIEWICZ, P.A. 640 DOUGLAS AVENUE DUNEDIN, FL 34698-7001			SMITH, KIMBERLY S	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

MAILED

Application Number: 10/647,006

Filing Date: August 22, 2003

Appellant(s): RAKOCZY, BETSIE MARSHALL DAVIS BROOKS

FEB 26 2007

GROUP 3600

Edward Dutkiewicz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/24/2006 appealing from the Office action mailed 05/19/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,848,714	ZIAYLEK	7-1989
2,615,238	HIGHWOOD	10-1952

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ziaylek, Jr. et al., US Patent 4,848,714 (Ziaylek) in view of Highwood, US Patent 2,615,238.

Ziaylek discloses a support system for a bottle comprising a bottle retaining member (10) including a vertical backing member (12) with a lower horizontal holding member (20) coupled to the vertical backing member, the bottle retaining member also having two horizontal holding members (24), each with an opening (as viewed in Figure 1) coupled to the vertical backing member of the retaining member at a position above the lower horizontal member, the retaining member including two laterally spaced threaded bolts (27). However, Ziaylek discloses the device being attached to a wall instead of a support base. Highwood teaches within the same field of endeavor the use of a support base having a lower plate (2) and a vertical support member (4) being coupled thereto for the attachment of a bottle retaining brace so as to provide a bottle support capable of use absent a wall to attach the support thereto. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the vertical support member as taught by Highwood with the bottle retaining brace as disclosed by Ziaylek for situations in which there is no wall space available for the attachment of the bottle retaining brace.

(10) Response to Argument

In response to Appellant's argument that there can be no teaching in Ziaylek for attaching it to a support base of the Highwood type, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor

is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In the instant case, it is maintained that one with ordinary skill in the art would, given the teaching of Highwood, find it obvious to attach any bottle mounting apparatus to a support structure such as Highwood's support so as to securely mount the bottle mounting apparatus on a floor or horizontal surface when wall space would not be available for mounting thereto.

In response to the Appellant's argument regarding the prior art was from diverse technologies, this is respectfully disagreed with. The Appellant's invention as claimed is directed to a support holder for a container. The specific limitations of the type of container are not positively recited and as such, the claims are merely directed to an apparatus for supporting a container. Both prior art references are specifically directed to the similar problem, i.e. the supporting of a container.

With respect to the Appellant's arguments regarding the prior art not teaching bolts adjustably coupling a bottle-retaining member with a support base, this is respectfully disagreed with. Attention is drawn to the Ziaylek reference, column 3, lines 38-43 in which it is clearly stated that there are vertically spaced pairs of openings (22) which are adapted to receive *bolts* for the purpose of securing the bracket to an appropriate vertical mounting surface. As such, it is maintained that the Ziaylek reference positively discloses the use of bolts for mounting the bottle-retaining member to a support base (stated as not being shown).

Appellant states in the Appeal Brief (page 5, first full paragraph) that Ziaylek discloses a vertical backing member with a lower horizontal holding member and two horizontal holding

members, each with an opening. Appellant further states that Highwood discloses a support base with a vertical support member and a lower plate. Ziaylek clearly states that the vertical backing member is to be attached to a vertical surface (not shown) by the receiving of bolts into vertically spaced pairs of openings. The use of a pair of openings precludes rotation. As such, it is respectfully submitted that the rejection of record be maintained as the prior art clearly discloses and provides motivation for the combination of reference satisfying all of Appellant's claimed limitations.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Kimberly S. Smith

Conferees:

Meredith Petrvick 

Yvonne Abbott 